

(29,836)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 526

HENRY MERRITT, APPELLANT,

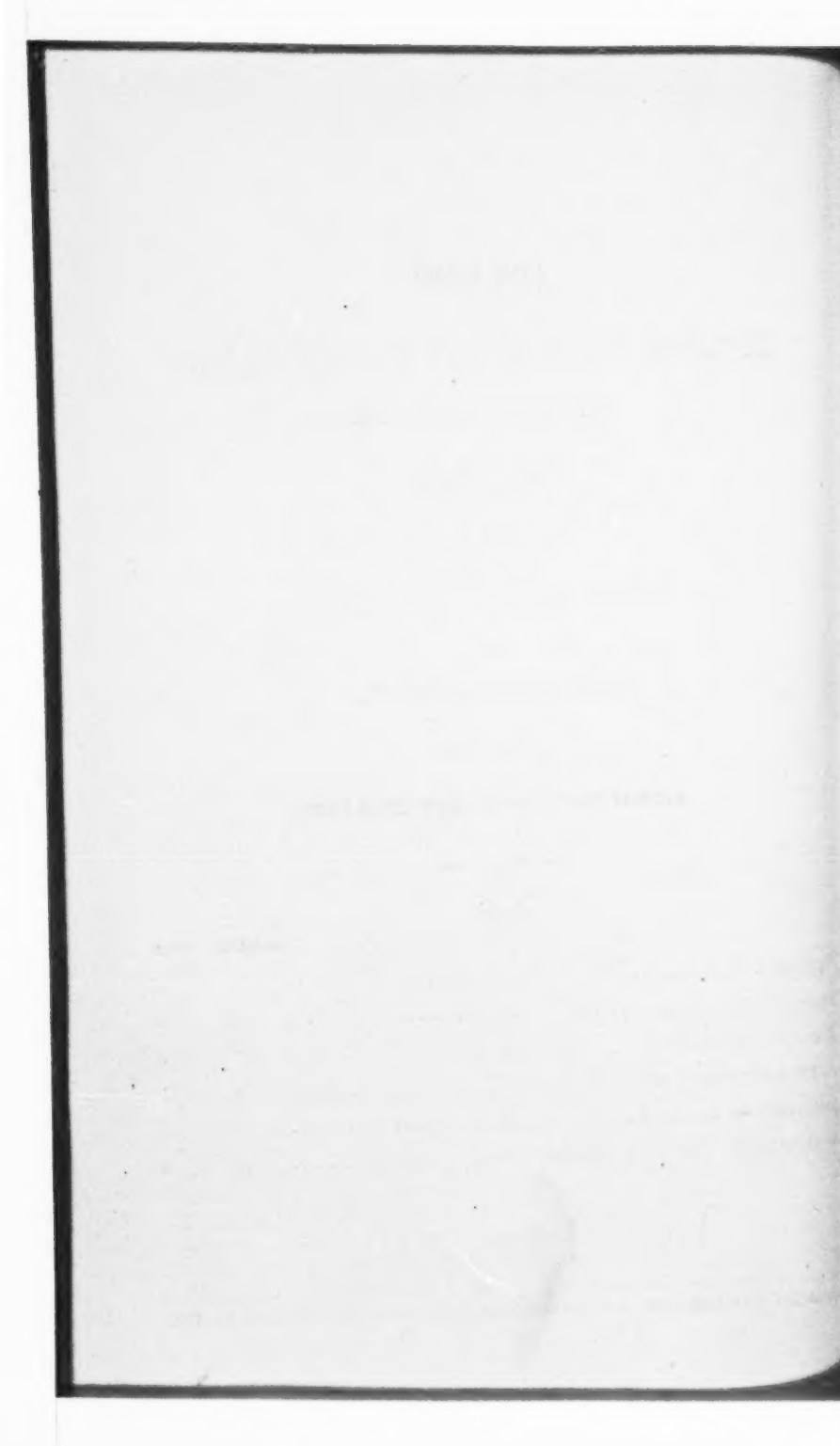
vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

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[fol. 1]

IN THE
COURT OF CLAIMS

No. C-56

HENRY MERRITT, Claimant,

vs.

THE UNITED STATES.

I. PETITION—Filed March 8, 1923

To the Honorable the Chief Justice and Associate Justices of the Court of Claims of the United States:

The petition of the claimant, Henry Merritt, respectfully represents:

1. That he is a citizen of the United States, a resident of the City of Webster, State of Massachusetts, and is there engaged in the manufacture of cloth under the name of the Merritt Woolen Company; that he is the sole owner of the claim hereinafter stated, no part of which has ever been paid, sold, assigned, aliened or discharged.

2. That on or about the 23d day of July, 1918, he entered into a contract with the Panama Knitting Mills Company of New York for the furnishing of approximately 15,000 yards of 6/4 Khaki cloth at \$3.20 per yard, according to specifications, which cloth was to be used in the manufacture of puttees for the United States Army, under a contract the said Panama Knitting Mills Company had with the War Department of the United States, which claimant is informed, was numbered 3581-N; that thereafter the United States through the War Department suspended the contract under which claimant was working.

[fol. 2] 3. Section 1 of the Act of Congress of March 2, 1919 (40 Stat. 1272) known as the Dent Act, provides in part as follows:

"That the Secretary of War be, and he is hereby, authorized to adjust, pay, or discharge any agreement, express or implied, upon a fair and equitable basis, that has been entered into, in good faith during the present emergency and prior to November twelfth, nineteen hundred and eighteen, by any officer or agent acting under his authority, direction, or instruction, or that of the President, with any person, firm or corporation for the acquisition of lands, or the use thereof, or for damages resulting from notice by the Government of its intention to acquire or use said lands, or for the production, manufacture, sale, acquisition, or control of equipment, materials or supplies, or for services, or for facilities, or other

purposes connected with the prosecution of the war, when such agreement has been performed in whole or in part, or expenditures have been made or obligations incurred upon the faith of the same by any such person, firm, or corporation prior to November twelfth, nineteen hundred and eighteen, and such agreement has not been executed in the manner prescribed by law."

4. That thereafter the Secretary of War proceeded to determine and settle the liability of the United States to claimant and the said Panama Knitting Mills Company, the prime contractor as aforesaid, under the contract aforesaid, under the provisions of the aforesaid Act of March, 1919, and did order claimant to deliver for the use of the United States, at the contract price of \$3.20 per yard as aforesaid, and which claimant did, 7,442 $\frac{7}{8}$ yards of the said Khaki cloth, for which the War Department paid to the Panama Knitting Mills Company for the account of claimant, \$3.20 per yard or \$23,-[fol. 3] 817.20 plus \$597.19 carrying charges for the five months said cloth had been held by claimant for delivery awaiting adjustment, which settlement claimant is informed was,—Cancellation Agreement, B-148, dated June 23, 1919, Purchase Section War Department Claims Board.

5. That notwithstanding the receipt for the account of claimant as aforesaid, of the contract price of said cloth or \$3.20 per yard, and which was unknown to claimant, at that time, the Panama Knitting Mills Company, informed claimant, that the Secretary of War had only allowed \$2.50 per yard for the said cloth, that is the 7,442 $\frac{7}{8}$ yards, and that he was compelling all contractors to take some loss in their settlements, and upon such fraudulent representation procured release from claimant for the said cloth, at the rate of \$2.50 per yard plus the carrying charges of \$597.19.

6. That when the aforesaid acts of the Panama Knitting Mills Company became known, the War Department enforced and exacted from the said Panama Knitting Mills Company a return of the difference in the settlement between it and the settlement the Panama Knitting Mills had with claimant, or viz, the sum of \$5,210.02, which money though demanded by claimant, the War Department refused and still refuses to pay claimant, and turned it into the Treasury of the United States, by the sanction and approval of the Secretary.

7. The aforesaid release of the Panama Knitting Mills Company being procured by fraud and being based upon no consideration, claimant, for cause of action herein, says there is due and owing to [fol. 4] him from the United States on account of the premises, the sum of \$5,210.02, exclusive of all counterclaims, and just defense on the part of the United States.

8. That claimant has at all times borne true allegiance to the government of the United States and has never taken part in rebellion or insurrection against it.

9. That Section 2 of said Dent Act provides:

"That the Court of Claims is hereby given jurisdiction on petition of any individual, firm, company or corporation referred to in Section 1 hereof, to find and award fair and just compensation in the cases specified in said Section in the event that such individual, firm, corporation or company shall not be willing to accept the adjustment, payment or compensation offered by the Secretary of War as hereinbefore provided, or in the event that the Secretary of War shall fail or refuse to offer a satisfactory adjustment, payment or compensation as provided for in said Section."

Wherefore claimant prays judgment against the United States in the sum of \$5,210.02, and for all proper relief in the premises.

Henry Merritt, Claimant. Perkins & Widmayer, Attorneys for Claimant.

[fols. 5 & 6] Jurat showing the foregoing was duly sworn to by Henry Merritt omitted in printing.

[fols. 7 & 8]

[Title omitted]

II. DEMURRER—Filed April 10, 1923

Defendant demurs to the petition in this case for the reason that it fails to state a cause of action against the United States.

Robert H. Lovett, Assistant Attorney General. C. M. Nash, W. F. Norris, Special Assistants to the Attorney General.

III. ARGUMENT AND SUBMISSION OF DEMURRER—April 30, 1923

Submitted on demurrer without argument by Mr. W. F. Norris for defendant, and argued and submitted by Mr. L. A. Widmayer for plaintiff.

[fols. 9 & 10]

[Title omitted]

IV. ORDER SUSTAINING DEMURRER—Decided May 7, 1923

This cause coming on to be heard was submitted upon the demurrer to the petition. On consideration whereof, the court is of the opinion that the demurrer is well taken. It is therefore adjudged and ordered that the defendant's demurrer to the plaintiff's petition be, and it is hereby, sustained and the petition is dismissed.

Memorandum

(1) The facts averred do not show a contract, express or implied, between plaintiff and the United States.

(2) It appears that the Government paid the prime contractor the price for the goods delivered and if the prime contractor imposed [fols. 11 & 12] upon plaintiff, that fact does not give a cause of action against the defendants.

[Title omitted]

V. APPLICATION FOR AND ORDER ALLOWING APPEAL—Filed July 3, 1923

From the judgment rendered in the above-entitled cause on the 14th day of May 1923, in favor of the defendant, plaintiff, by his attorney, makes application for and gives notice of an appeal to the Supreme Court of the United States.

L. B. Perkins, L. A. Widmayer, Attorneys for Plaintiff.

Ordered: That the above appeal be allowed as prayed for.

By the Court. August 2, 1923.

CLERK'S CERTIFICATE

I, J. Bradley Tanner, Chief Clerk, Court of Claims, certify that [fol. 13] the foregoing are true transcripts of the pleading in the above-entitled cause; of the demurrer; the argument and submission of the case on demurrer; order sustaining demurrer; memorandum of the Court thereon; and application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, D. C., this 14th day of August, A. D. 1923.

J. Bradley Tanner, Chief Clerk Court of Claims. G. E. D.
[Seal of the Court of Claims.]

Endorsed on cover: File No. 29,836. Court of Claims. Term No. 526. Henry Merritt, appellant, vs. The United States. Filed August 28th, 1923. File No. 29,836.